IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MICHAEL E. KEPLER, United States Trustee,

Plaintiff-Appellee,

v.

EARL A. EICHLINE and EARL A. EICHLINE REVOCABLE TRUST,

Defendants-Appellants.

OPINION & ORDER

12-cv-113-wmc

On December 17, 1998, Earl Eichline deeded a 160-acre parcel of real property ("the Property") to his son, Eric Eichline. Two months later, the son agreed in writing to convey the Property either to Earl or a trust of Earl's creation at the time the mortgage on the Property was "paid, refinanced, or released for whatever reason." In 2006, Earl filed for Chapter 7 bankruptcy relief and declared that he had no interest in, or future claims to, any real estate. In 2009, however, he demanded the Property, and his son accordingly transferred it to a newly-created family trust. When United States Trustee Michael Kelper discovered this, he sought to reopen the bankruptcy case, void the transfer under 11 U.S.C. § 549 and recover the property.

The bankruptcy court agreed with the trustee, holding that the transfer from Eric to the trust was an unauthorized, post-petition transfer, and ordered that the Property be recovered for the benefit of the estate pursuant to 11 U.S.C. § 550. On appeal, this court affirmed the bankruptcy court in most respects but concluded that § 549 avoidance was unavailable. Specifically, the court held that at the time Earl declared bankruptcy, he had a "potentially valuable, but still inchoate" contractual or equitable legal claim against Eric.

(Aug. 16, 2013 Opinion & Order (dkt. #7) 8.) Thus, the transfer of the Property from Eric to the trust did not constitute a transfer of "property of the [bankruptcy] estate," as § 549 requires. Recognizing this result as highly inequitable, however, the court also ordered the bankruptcy court to determine if recovery of the property under 11 U.S.C. § 550 was available under its § 105 equitable powers. (*Id.* at 11.)

The trustee has since moved to alter or amend the judgment, pursuant to Federal Rule of Civil Procedure 59(e). (Dkt. #9.) Defendant-appellant's response to the motion is just two pages and merely recites the standards applicable to a Rule 59(e) motion without performing any analysis or responding to plaintiff-appellee's arguments. (*See* dkt. #14.) Plaintiff-appellee's motion is, therefore, essentially unopposed.

The court agrees that the trustee has identified a factual error in the court's original opinion with respect to the nature of Earl's right to receive the property and will grant reconsideration on that point. The court also agrees that § 549 avoidance applies to the transfer of this same right to the Trust. Accordingly, the court holds as follows: (1) the transfer of Earl's right to have the Property conveyed to him is an avoidable transaction pursuant to 11 U.S.C. § 549; (2) for the benefit of the bankruptcy estate, the trustee may recover that right and the Property may be recovered from the Trust pursuant to 11 U.S.C. § 550; (3) this remedy is also consistent with the bankruptcy court's equitable powers pursuant to 11 U.S.C. § 105(a); and (4) the bankruptcy court's decision is affirmed in all other respects.

OPINION

"To prevail on a motion for reconsideration under [Fed. R. Civ. P. 59(e)], the movant must present either newly discovered evidence or establish a manifest error of law or fact." *Oto v. Metro. Life Ins. Co.*, 224 F.3d 601, 606 (7th Cir. 2000) (citation omitted). The decision to grant or deny Rule 59(e) relief is entrusted to the district court's sound judgment. *LB Credit Corp. v. Resolution Trust Corp.*, 49 F.3d 1263, 1267 (7th Cir. 1995).

The trustee first argues that this court made a factual error in concluding that Earl did not possess the right to have the property transferred to him at the time of the bankruptcy filing. Specifically, this court found that:

> The bankruptcy court stated that "the value of Earl's interest in the Property is the value of the Property itself," but this may or may not be accurate because Earl's interest was only a contract claim to have the property deeded to him after the mortgage was paid off. At that time, therefore, the claim was presumably worth something less than outright ownership of the property, factoring in an appropriate discount for uncertainty as to when the mortgage might be paid down and by whom.

(Aug. 16, 2013 Opinion & Order (dkt. #7) 8.) Based on that finding, the court concluded that, even assuming avoidance was possible, the estate did not have "even the contractual right to insist on transfer" at the time of the bankruptcy, making any recovery under 11 U.S.C. § 550 "premature." (*Id.* at 10.)

As the trustee points out, however, the contract between Earl and his son actually constituted a promise that Eric would convey the Property either to Earl or to "Earl's family trust" when the mortgage was "paid, refinanced, or released for whatever reason." (*See id.* at 3.) Moreover, the parties stipulated before trial that that condition had actually been met: "The conditions in Paragraph 1 of the Agreement Governing Certain Real Estate dated

February 27, 1999 . . . have been met inasmuch as the primary mortgage in existence at the time the Agreement was signed has been paid and refinanced or released." (*See* Stipulation (Bankr. W.D. Wis., Adv. No. 11-00100-rdm, dkt. #38) ¶ 4.) The bankruptcy court likewise found that "Eric refinanced the mortgages on the Property several times between 1998 and 2008." (Memo. Decision (Bankr. W.D. Wis., Adv. No. 11-00100-rdm, dkt. #40) 2-3.) With the condition met, and with no family trust yet in existence, the court agrees that Earl *did* have the right to insist on an immediate transfer -- and, perforce, that the estate had that same right at the time of the bankruptcy.

The next question is whether this right was the "property of the bankruptcy estate" under 11 U.S.C. § 541. In the Seventh Circuit, "every conceivable interest of the debtor, future, nonpossessory, contingent, speculative, and derivative, is within the reach of § 541." *In re Yonikus*, 996 F.2d 866, 869 (7th Cir. 1993), *abrogated on other grounds by Law v. Siegel*, 134 S. Ct. 1188 (2014). In light of that rule, the court reaffirms its previous statement that "the bankruptcy court was correct in finding that Earl had a valuable interest in the land that should have been listed among the assets of the bankruptcy estate." (Aug. 16, 2013 Opinion & Order (dkt. #7) 8.)

Finally, the court must determine whether avoidance is proper under § 549 in light of its corrected understanding of the facts. As noted above, § 549(a) allows the trustee to avoid transfers "of property of the estate." *See In re Ford,* 61 B.R. 913, 917 (Bankr. W.D. Wis. 1986) ("Section 549(a) expressly applies only to property of the estate."); 5 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 549.04[1] (16th ed. 2014) ("In order for a transfer to be voidable by the trustee, the transfer must be of property of the estate."). The court previously concluded that Earl's *interest* in the Property – but not the Property

itself -- was part of the bankruptcy estate, foreclosing § 549 avoidance of the transfer of the Property. The trustee offers no basis in fact or law to deviate from the holding that "a trustee takes the property subject to the same restrictions that existed at the commencement of the case. 'To the extent an interest is limited in the hands of a debtor, it is equally limited as property of the estate.'" *In re Sanders*, 969 F.2d 591, 593 (7th Cir. 1992) (quoting *In re Balay*, 113 B.R. 429, 445 (Bankr. N.D. Ill. 1990)); *see also In re Straightline Investments, Inc.*, 525 F.3d 870, 877 (9th Cir. 2008) (recognizing distinction between accounts receivable themselves and funds paid by account debtors). As the trustee points out, however, this distinction make no practical difference since factually Earl's right to take the Property had already matured at the time of transfer.

In any event, the court agrees on reconsideration that an avoidable transfer occurred under § 549. The Bankruptcy Act defines "transfer" as including "each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with – (i) property; or (ii) an interest in property." 11 U.S.C. § 101(54)(D). "Congress intended the term 'transfer' to be construed as broadly as possible." *In re FBN Food Servs., Inc.*, 185 B.R. 265, 272 (N.D. Ill. 1995), *aff'd*, 82 F.3d 1387 (7th Cir. 1996). "The essence of a transfer is the relinquishment of a valuable property right." *In re Commodity Merchants, Inc.*, 538 F.2d 1260, 1263 (7th Cir. 1976). Since Earl's inchoate right to transfer had matured while in bankruptcy, the failure to recognize that right as property of the estate violated § 549.

In light of these principles, the court agrees with the bankruptcy court and the trustee that an avoidable "transfer" of bankruptcy estate property did occur. The Property

itself may not have been part of the bankruptcy estate, but Earl's matured contractual/equitable right to compel its transfer to himself *was*.

Nevertheless, on April 22, 2009, Earl created the Earl A. Eichline Revocable Trust and established himself as Trustee; and on May 12, 2009, he ordered Eric to convey the Property to that Trust. Essentially, at that point, Earl relinquished his right to have the Property conveyed to him *personally,* giving over that right to the Trust, which realized it on May 12, 2009. *See Straightline Investments*, 525 F.3d at 877 (9th Cir. 2008) (sale by debtor of accounts receivable; "transfer" occurred even though debtor had no control over the funds ultimately collected because debtor "had a legal interest in its accounts receivable in the form of a right to collect them when it transferred them"). Thus, as the bankruptcy court effectively held originally, the trustee should have been able to avoid Earl's transfer of the right to the Property.

To be clear, there still appears no right under § 549 to avoid *Eric's* transfer of the Property to the *Trust*, since it was never part of the bankruptcy estate. To that extent, the bankruptcy court's holding was not technically correct, but only technically, since the trustee may avoid the transfer of Earl's right to have the property conveyed to him. Moreover, as noted in this court's earlier opinion, § 105(a) allows for the entry of an order necessary to carry out the provisions of the Bankruptcy Code,[1] so long as it does so within the confines of the rest of the Code. *Law*, 134 S. Ct. at 1194.

---

[1] The court's previous order suggested that the bankruptcy court consider employing its equitable powers under § 105(a), which permits it to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). As the trustee points out, however, "the powers conferred by § 105(a) must be exercised 'within the confines of the Bankruptcy Code.'" *Disch v. Rasumussen*, 417 F.3d 769, 777 (7th Cir. 2005) (quoting *In re Lloyd*, 37 F.3d 271, 275 (7th Cir. 1994)); *see also Law*, 134 S. Ct. at 1194.

Accordingly, the court grants the Trustee's motion to reconsider and directs the entry of judgment as set forth below.

ORDER

IT IS ORDERED that:

1) Plaintiff-Appellee Michael E. Kepler's motion to alter or amend the judgment (dkt. #9) is GRANTED.

2) The clerk of court is directed to enter judgment as follows: (1) the transfer of Earl's right to have the Property conveyed to him is an avoidable transaction pursuant to 11 U.S.C. § 549; (2) for the benefit of the bankruptcy estate, the trustee shall recover that right and the Property may be recovered from the Trust pursuant to 11 U.S.C. § 550; (3) this remedy is also consistent with the bankruptcy court's equitable powers pursuant to 11 U.S.C. § 105(a); and (4) the bankruptcy court's decision is affirmed in all other respects.

Entered this 30th day of September, 2014.

BY THE COURT:

/s/

_____

WILLIAM M. CONLEY
District Judge